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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,972	09/15/2006	Stephen William Briggs	DUMMETT-056XX	2766

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835 HANOVER STREET
SUITE 301
MANCHESTER, NH 03104

EXAMINER

HORN, ROBERT WAYNE

ART UNIT	PAPER NUMBER
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2837

MAIL DATE	DELIVERY MODE
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05/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,972	Applicant(s) BRIGGS ET AL.	
	Examiner ROBERT W. HORN	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-11,13-15,17,18,20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-11,13-15,17,18,20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/17/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner acknowledges *preliminary* amendments dated 9/15/2006. With the amendments, claims 1-4, 6-11, 13-15, 17-18, and 20, and 22-25 remain pending. Claims 1, 3, 4, 6-11, 13-15, 17-18, 20, and 22-25 are amended. Claims 5, 12, 16, 19, and 21 have been cancelled. The amendments have been accepted as proper in that no new material has been added.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 6, 9-10, 13, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLennan (U. S. Patent 5,199,621) and Borawski (U. S. Patent Design 342,155).

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Regarding claim 1, McLennan discloses a drum stick holder (figure 4), comprising

a plurality of substantially parallel tubular sleeves 12, each sleeve extending between opposite sleeve ends and being joined to at least one adjacent sleeve and having at one or both of said ends an entrance with dimensions suitable for receiving just one drum stick (as shown in figure 5), wherein at least one of the sleeves has an entrance at both of said ends... (each tube) is formed from an integral tube of elastomeric material (column 4, line 22) ... so that each sleeve may hold a drum stick inserted into the entrance at one or both of said ends of said sleeve (as shown in figure 4).

McLennan does not teach the limitations wherein each sleeve extends fully around a longitudinal axis of the sleeve. The drum holder by McLennan has elastomeric material that is formed into loops that extend mostly around a longitudinal axis of the sleeve. A body part 16 holds the loops 12 and extends part way around the sleeves to close the loops into sleeves.

Sleeve holders in a cylindrical for items are widely known for holding a broad array of items. Borawski teaches a variant design comprising the limitations wherein each sleeve extends fully around a longitudinal axis of the sleeve. The drum holder design by McLennan could be modified to use loops that extend all the way around the longitudinal axis of the sleeve as illustrated by Borawski and serve the same functions as taught by McLennan.

Regarding the material of construction McLennan teaches the material is a ribbon, suggestively a knit fabric which could include elastomeric fibers.. The courts have held it to be within the general skill of a worker to in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Considering the objective evidence, it would have been obvious to the person of ordinary skill at the time the invention was made to modify the drum holder by McLennan according to the illustrations by Borawski, and the selection of a known material, an elastomer, as a matter of obvious design choice.

Regarding claim 2, McLennan and Borawski teach a drum stick holder as claimed in Claim 1, and both teaches the limitations in which each of said sleeves has a longitudinal axis, and each of said axes lies in a common plane that extends through each sleeve (McLennan, figure 4; Borawski, figure 4).

Regarding claim 3, McLennan and Borawski teach a drum stick holder as claimed in Claim 2, and Borawski teaches the limitations in which each sleeve is joined to an adjacent sleeve by means of a web of elastomeric material (figure 3, item 12; column 4, lines 21-35).

Regarding claim 4, McLennan and Borawski teach a drum stick holder as claimed in Claim 3, in which the or each web of material lies in said plane in which said longitudinal axes lie (McLennan modified according to the design by Borawski would comprise this limitation, as shown by Borawski in figure 4.).

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Regarding claim 6, McLennan and Borawski teach a drum stick holder as claimed in Claim 1 and McLennan teaches the limitations in which all of the sleeves have an entrance arc open at both ends (as shown in figures 4 and 5).

Regarding claim 9, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. McLennan and Borawski does not teach the limitations in which each of said sleeves is integrally moulded with the other sleeve(s) as an extrusion. However, the teachings are obvious over the structure formed and the method of forming is not germane to the issue of the patentability of the device itself. Therefore the limitation in which each of said sleeves is integrally moulded with the other sleeve(s) as an extrusion has not been given patentable weight.

Regarding claim 10, McLennan and Borawski teach a drum stick holder as claimed in Claim 1 and McLennan teaches a device which accommodates drumsticks of tapering cross section (column 2, lines 16-18). McLennan also teaches the sleeves may be varied to accommodate the geometrical differences in the striking and holding ends of a drum striker (column 5, lines 18-20)

In view of the suggestions and problem solving area taught by McLennan It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least one sleeve is tapered internally to aid insertion of a drum stick into the sleeve and to grip the drum stick once inserted into the sleeve, to accommodate the geometrical differences in the striking and holding ends of a drum striker, taught by McLennan.

Regarding claim 13, McLennan and Borawski teach a drum stick holder as claimed in Claim 1, and Borawski teaches the limitations in which each sleeve has an annular cross-section.

Regarding claim 24, McLennan and Borawski teach a drum stick holder as claimed in Claim 22, and McLennan teaches the limitations in which the open ends of said sleeves are arranged in a V-pattern (as shown in figure 5; column 2, lines 40-42).

Regarding claim 25, McLennan teaches an accessory for a percussion instrument comprising a drum stick holder and at least one drum stick, said holder having at least one elastomeric (elastic, column 4, line 22) sleeve and the drum stick being inserted partially into said sleeve to expand at least to some degree the sleeve so that the sleeve thereby holds or grips the drum stick (column 3, lines 6-11), wherein the drum stick holder comprises

a plurality of substantially parallel tubular sleeves (items 12 and 34, figure 4), each sleeve extending between opposite sleeve ends and been joined to at least one adjacent sleeve (as shown in figure 3) and having at one or both of said ends an entrance with dimensions suitable for receiving just one drum stick, wherein at least one of the sleeves has an entrance at both of said ends (as shown in figure 4) and is formed from an integral tube of elastomeric material (elastic ribbon, column 4, line 22) so that each sleeve may hold a drum stick inserted into the or either entrance to said sleeve (as shown in figure 4).

McLennan does not teach each sleeve extends fully around a longitudinal axis of the sleeve. The drum holder by McLennan has elastomeric material that is formed into

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loops that extend mostly around a longitudinal axis of the sleeve. A body part 16 holds the loops 12 and extends part way around the sleeves to close the loops into sleeves.

Sleeve holders in a cylindrical for items are widely known for holding a broad array of items. Borawski teaches a variant design comprising the limitations wherein each sleeve extends fully around a longitudinal axis of the sleeve. The drum holder design by McLennan could be modified to use loops that extend all the way around the longitudinal axis of the sleeve as illustrated by Borawski and serve the same functions as taught by McLennan.

Regarding the material of construction McLennan teaches the material is a ribbon, suggestively a knit fabric which could include elastomeric fibers.. The courts have held it to be within the general skill of a worker to in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Considering the objective evidence, it would have been obvious to the person of ordinary skill at the time the invention was made to modify the drum holder by McLennan according to the illustrations by Borawski, , and the selection of a known material, an elastomer, as a matter of obvious design choice.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLennan and Borawski as applied to claim 1 above, and further in view of Gillis (U. S. Patent 4,531,443).

Regarding claim 7, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. McLennan and Borawski does not teach the limitations in which the

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holder comprises one or more plugs that may be removably inserted into one or more corresponding sleeves to close off one end of said sleeve(s)

Gillis teaches the limitations in which the holder comprises one or more plugs that may be removably inserted into one or more corresponding sleeves to close off one end of said sleeve(s) (column 2, lines 37-43). A motivation for the plugs is for plugging or closing an end.

Considering the objective evidence, it would have been obvious to the person of ordinary skill at the time the invention was made to further modify the combination by McLennan and Borawski by providing one or more plugs that may be removably inserted into one or more corresponding sleeves to close off one end of said sleeve(s), taught by Gillis, motivated for plugging or closing an end, taught by Gillis.

Regarding claim 8, McLennan, Borawski and Gillis teach a drum stick holder as claimed in Claim 7. The combination of references does not teach the limitations in which at least one plug when inserted into a sleeve is adjustable along an axial direction to vary the depth of said sleeve.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the plug position adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLennan and Borawski as applied to claim 1 above, and further in view of Calasibetta et al. (U. S. Patent 2,805,814).

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Regarding claim 11, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. The references does not teach the limitations in which a tear strip separates at least two adjacent sleeves so that at least one sleeve may be torn from the drum stick holder to reduce the number of sleeves.

the limitations in which a tear strip separates at least two adjacent sleeves so that at least one sleeve may be torn from (an item) holder to reduce the number of sleeves. Calasibetta et al. teaches the motivation of the feature, readily separable compartments. Calasibetta et al., McLennan and Borawski share a problem solving area of holding like items together in an array.

Considering the objective evidence, it would have been obvious to the person of ordinary skill at the time the invention was made to combine the teachings of McLennan, Borawski and Calasibetta et al. to make a drum stick holder having a tear strip that separates two adjacent (sleeves) compartments, wherein the compartments are readily separable as taught by Calasibetta et al.

Claims 14, 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLennan and Borawski as applied to claim 1 above, and further in view of Leduchowski (U. S. Patent 5,551,660).

Regarding claim 14, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. McLennan and Borawski does not teach the limitations comprising additionally a mount for mounting the holder to a drum kit, the arrangement being such that each sleeve is supported by the mount.

Leduchowski teaches the limitations the limitations comprising additionally a mount for mounting the holder to a drum kit, the arrangement being such that each sleeve is supported by the mount (as shown in figure 1). Leduchowski teaches the motivation of the arrangement easy removal and effective fastening of the drum stick holder to a stand, bar or rim.

Considering the objective evidence, it would have been obvious to the person of ordinary skill at the time the invention was made to modify a combination taught by McLennan and Borawski, according to the teachings of Leduchowski, comprising a mount for holding the holder to a drum kit, motivated easy removal and effective fastening of the drum stick holder to a stand, bar or rim.

Regarding claim 15, Leduchowski, McLennan and Borawski teach a drum stick holder as claimed in Claim 14, and Leduchowski teaches the limitations in which the mount is affixed to one end of at least one sleeve (as shown in figure 1).

Regarding claim 17, Leduchowski, and McLennan and Borawski teach a drum stick holder as claimed in Claim 14 in which the mount includes at least one projection (extended part of items 70 and 82, figures 1 and 2) which locates in at least one corresponding sleeve in order to secure the mount to the sleeves (parts cited project to locate in at least one corresponding sleeve as claimed).

Regarding claim 18, Leduchowski, and McLennan and Borawski teach a drum stick holder as claimed in Claim 14 and Leduchowski teaches the limitations in which the mount is a bracket (items 70 and 82) seated in a radially extending (aperture) at an

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end of a sleeve. Leduchowski does not teach the aperture is a slot. The examiner take official notice that a slot is an art recognized substitute forms of mounting

It would have been an obvious matter of design choice to select either an aperture or a slot for mounting to one having ordinary skill in the art at the time the invention was made to substitute an aperture for a slot since the examiner takes official notice of the equivalence of a slot and an aperture for the purpose of mounting and the selection of any of these known equivalents to slot for mounting would be within the level of ordinary skill in the art.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLennan and Borawski as applied to claim 1 above, and further in view of Warrick et al. (U. S. Patent 4,246,826).

Regarding claim 20, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. The references do not teach the limitations in which one or more sleeves has a stepped internal diameter. McLennan does however teach that the holder can be changed to accommodate the geometric difference in striking and holding ends and diameter and length. Warrick et al. teaches a drum stick that is small on the striking end and large on the holding end.

In view of accommodating a drum stick of these diameters, taught by Warrick et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the internal diameters of the sleeves taught by McLennan and Borawski.

Claims 22 rejected under 35 U.S.C. 103(a) as being unpatentable over McLennan and Borawski as applied to claim 1 above, and further in view of Pond (U. S. Patent 5,139,143).

Regarding claim 22, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. The references does not teach limitations in which there are at least three sleeves at least one middle sleeve projecting forwards of adjacent outermore sleeves relative to an insertion direction for drum sticks. Both McLennan and Borawski teach the sleeves projecting a same length relative to an insertion direction.

In the art of sleeved article holders, it is known to have the sleeve length to project in an insertion direction to match the size of the item (tool) to be inserted (column 3, lines 35-38), as taught by Pond. Pond illustrates the example of where the outermore sleeves (figure 6) project further in an insertion direction than the innermore sleeves.

In view of the problem solving area, taught by Pond, it would be obvious make a modification on the combination drum stick holder taught by McLennan and Borawski to provide also a pattern of sleeves wherein a middle sleeve project inwards relative to an insertion direction, the pattern of the projections a matter of design choice, whereas the sleeve length is motivated to match the size of the item held in the sleeve, as taught by Pond.

Regarding claim 23, McLennan and Borawski teach a drum stick holder as claimed in Claim 1. McLennan and Borawski does not teach the limitations in which

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there are at least three sleeves at least one middle sleeve projecting inwards of adjacent outermore sleeves relative to an insertion direction for drum sticks.

Pond teaches a holder for tools comprising the limitations in which there are at least three sleeves at least one middle sleeve projecting inwards of adjacent outermore sleeves relative to an insertion direction for (items inserted). Pond teaches the projection length of the sleeves motivated to match the size of the item to be inserted.

Considering the objective evidence, it would have been obvious to the person of ordinary skill at the time the invention was made to modify the invention according to the combination by McLennan and Borawski in which there are at least three sleeves at least one middle sleeve projecting inwards of adjacent outermore sleeves relative to an insertion direction for items, in view of the pattern of sleeves taught by Pond, wherein the pattern selected is a matter obvious design choice and varying lengths of the sleeves is motivated to provide a sleeve sized to match the size of the item (tool) to be inserted, as taught by Pond.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The examiner points to the references cited in the form 892. The examiner advises the applicant to review these references, because the examiner may apply the references in future actions, if necessitated by amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Horn whose telephone number is 571-272-8591. The examiner can normally be reached on Monday-Friday 7:00-3:30 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on 571-272-2227. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert W Horn/
Examiner, Art Unit 2837
May 7, 2009

/Walter Benson/
Supervisory Patent Examiner, Art Unit 2837